

# HOUSE BILL REPORT

## HB 1292

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**As Reported by House Committee On:**  
Human Services, Youth, & Early Learning

**Title:** An act relating to modifications necessary to comply with federal regulations regarding dissemination of federal bureau of investigation criminal history record information.

**Brief Description:** Making modifications necessary to comply with federal regulations regarding dissemination of federal bureau of investigation criminal history record information.

**Sponsors:** Representatives Goodman and Senn; by request of Department of Social and Health Services.

**Brief History:**

**Committee Activity:**

Human Services, Youth, & Early Learning: 1/24/23, 2/3/23 [DPS].

**Brief Summary of Substitute Bill**

- Modifies provisions related to sharing background check information between designated entities to limit sharing to that which is authorized under federal law, and in some instances, to state information.
- Separates provisions related to the shared responsibilities of the Department of Social and Health Services and the Department of Children, Youth, and Families to conduct fingerprint-based background checks of certain persons, and specifies the categories of persons to which the fingerprint-based background check requirements apply.

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### HOUSE COMMITTEE ON HUMAN SERVICES, YOUTH, & EARLY LEARNING

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 11 members: Representatives Senn, Chair; Cortes, Vice Chair; Taylor, Vice Chair; Eslick, Ranking Minority Member; Couture, Assistant Ranking Minority Member;

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.*

Callan, Dent, Goodman, Ortiz-Self, Rule and Walsh.

**Staff:** Omeara Harrington (786-7136).

**Background:**

Criminal History Information.

The Washington State Patrol's (WSP) Criminal History Records Section is the central repository for criminal history record information (CHRI) for Washington. The CHRI consists of fingerprint-based records and disposition information submitted by law enforcement agencies and courts throughout the state. The WSP facilitates background checks for other agencies, employers, and the public.

Federal Bureau of Investigation (FBI) records are compiled from records received from local, state, federal, tribal, and international criminal justice agencies. Federal law allows for the exchange of criminal records and related information within the possession of the FBI with authorized officials of the federal government, states, Indian tribes, cities, and penal and other institutions. Exchange of these records is only for official use and is subject to cancellation if dissemination is made outside of authorized recipients. The FBI must approve the state background check laws before it will grant access to its criminal history database.

Background Check Requirements.

Persons with certain criminal history, pending charges, or history of other disqualifying negative action are disqualified from working in positions where they will have unsupervised access to children or vulnerable adults. A person must pass a fingerprint-based state and federal background check through the WSP and the FBI before working in a long-term care or child care position with such unsupervised access. For other persons, the Department of Social and Health Services (DSHS) and the Department of Children, Youth, and Families (DCYF) may require a fingerprint-based background check through both the WSP and the FBI at any time, and must require a fingerprint-based check when a person has resided in the state less than three consecutive years and meets certain other criteria.

Background check screening is not required for an employee of a consumer directed employer if the individual has an individual provider contract with the DSHS, the last background check is still valid, employment with the consumer directed employer is the only reason a new background check would be required, and the DSHS's background check results have been shared with the employer.

Sharing Background Check Information.

There are a number of provisions that allow sharing of background check information between designated entities. The DSHS may share the results of state and federal background checks with the Department of Health in furtherance of the prohibition against any long-term care worker who has been disqualified from working with vulnerable persons

working as a home care aide. The DSHS must also make background check information pertaining to long-term care workers available to employers, prospective employers, and others as authorized by law. To satisfy shared background check requirements, the DSHS and the DCYF must share federal fingerprint-based background check information as permitted by law, but must not share this information with other agencies or persons. Processes designed to facilitate timely access to criminal background check information for health care providers allows health care facilities to share completed criminal background inquiry information under certain circumstances.

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### **Summary of Substitute Bill:**

Provisions that allow sharing of background check information between designated entities are modified to limit such sharing to that which is authorized under federal law. Provisions allowing for the exchange of criminal background check information between health care facilities are limited to state information. Provisions requiring the DCYF and the DSHS to share federal fingerprint based background check results are modified to allow, but not require, sharing of state-based information, and to limit the sharing of federal background checks to sharing that is permitted in federal law. Rather than requiring the DSHS to make background check information pertaining to long-term care workers available to employers, prospective employers, and others as authorized by law, the DSHS must inform prospective employers whether screened applicants are eligible or ineligible for employment.

The WSP background check provisions addressing the shared responsibilities of the DSHS and the DCYF conduct fingerprint-based background checks of certain persons are separated. The categories of persons are specified for whom the DSHS must require a fingerprint-based background check, including any individual who:

- has resided in the state less than three years and is applying for employment, promotion, reallocation, or transfer to a position that will, or may, require unsupervised access to vulnerable adults, children, or juveniles; is a contractor providing services funded by certain home and community long-term care programs; is authorized to provide services to persons with developmental disabilities; or is an employee of an area agency on aging or federally recognized Indian tribe, or an employee of a contractor for one of these entities, that may have unsupervised access to vulnerable adults, children, or juveniles;
- is an employee of certain secure facilities;
- is applying to be an adult family home licensee, entity representative, or resident manager;
- is applying to be an assisted living facility or enhanced services facility licensee or administrator;
- is applying to be a certified community residential services and supports provider or administrator; or
- has been categorized as a high-risk provider.

The categories of persons are specified for whom the DCYF must require a fingerprint-based background check, including any individual who:

- is applying for a license to provide certain foster or maternity care services, or is an adult living in a home where a child is placed;
- is applying for employment or already employed at a group care facility, regardless of whether the applicant is working directly with children;
- is newly applying for a child care license, is newly licensed, is an employee of a child care agency that is newly licensed, or will newly have unsupervised access to children in child care; or
- has resided in the state less than three consecutive years before application and is applying for employment, promotion, reallocation, or transfer to a position that may require unsupervised access to children or juveniles; is a business or individual contracted to provide developmental disabilities services; or is a person age 16 or older who is residing with or under the care of an applicant or service provider providing foster care or other services.

The provision exempting employees of consumer directed employers meeting certain criteria from background check requirements is removed.

Various definitions are removed, and changes are made to reorganize and clarify current law provisions.

### **Substitute Bill Compared to Original Bill:**

The substitute bill makes a technical change to correct a cross reference.

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**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date of Substitute Bill:** The bill takes effect 90 days after adjournment of the session in which the bill is passed.

### **Staff Summary of Public Testimony:**

(In support) This bill is in response to concerns by the DSHS that the FBI will no longer allow the state to access its criminal history database to perform background checks without changes to provisions of statute related to information sharing. The FBI must review and approve a state's law before granting access, and the FBI notified the state that the state's laws will not be approved unless changes are made to comply with federal law. The state has a waiver until the end of this year, but if changes are not made by then, access will be cut off. This bill was coordinated with the FBI to allow the state to continue performing background checks. These are technical fixes to conform language to federal law, and they

will not change current practice, but the fixes are essential to protect people who are vulnerable.

(Opposed) None.

**Persons Testifying:** Representative Roger Goodman, prime sponsor; and Monika Vasil, Department of Social and Health Services.

**Persons Signed In To Testify But Not Testifying:** None.